

## Assembly Bill No. 3088

### CHAPTER 787

An act to amend Section 1861.16 of the Insurance Code, relating to automobile insurance.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 3088, Jerome Horton. Auto insurance: good driver discounts.

Existing law requires agents or representatives representing insurers under common ownership, management, or control to offer, and one of these insurers to sell, a good driver discount policy to a good driver. Under Proposition 103, an insurer is required to offer good driver discount policies to individuals who meet specified requirements.

This bill would provide that, notwithstanding the above provisions, insurers operating under common management or control are not required to sell good driver discount policies issued by other insurers within the common ownership group if specified conditions are met. Because this bill would change the requirements contained in Proposition 103 with respect to offering good driver discount policies, it would amend that proposition and would therefore require a  $\frac{2}{3}$  vote for enactment.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1861.16 of the Insurance Code is amended to read:

1861.16. (a) An insurer issuing a policy described in subdivision (a) of Section 660 by or through an insurance agent where a commission is paid, directly or indirectly, to that agent shall, when issuing a policy in the minimum financial responsibility coverage amount as required by Section 1861.15, pay a commission on the same terms and on the same percentage basis to that agent as for any higher amount of policy coverage sold by that agent. In no case shall the percentage amount of commission paid to that agent for a policy of minimum financial responsibility coverage be less than the percentage commission paid to that agent on any higher level of policy coverage issued by that insurer.

(b) An agent or representative representing one or more insurers having common ownership or operating in California under common management or control shall offer, and the insurer shall sell, a good



driver discount policy to a good driver from an insurer within that common ownership, management, or control group, which offers the lowest rates for that coverage. This requirement applies notwithstanding the underwriting guidelines of any of those insurers or the underwriting guidelines of the common ownership, management, or control group. Nothing in this subdivision shall require an insurer to offer and sell a good driver discount policy that the insurer would otherwise not be required to offer and sell in accordance with paragraph (3) of subdivision (b) of Section 1861.02. As used in this subdivision, “representative” means any person who offers or prepares premium quotations on behalf of either an insurer or any entity acting directly or indirectly on behalf of an insurer. This subdivision shall not be construed to either permit a representative to transact insurance, or to exempt a representative who does transact insurance from the licensing provisions of this code.

(c) (1) Notwithstanding subdivision (b), insurers having common ownership and operating in California under common control are not required to sell good driver discount policies issued by other insurers within the common ownership group if the commissioner determines that the insurers satisfy each of the following conditions:

(A) The business operations of the insurers are independently managed and directed.

(B) The insurers do not jointly develop loss or expense statistics or other data used in ratemaking, or in the preparation of rating systems or rate filings.

(C) The insurers do not jointly maintain or share loss or expense statistics, or other data used in ratemaking or in the preparation of rating systems or rate filings. This condition shall not apply if the data is generally available to the industry through a nonaffiliated third party and is obtained from that third party.

(D) The insurers do not utilize each others’ marketing, sales, or underwriting data.

(E) The insurers act independently of each other in determining, filing, and applying base rates, factors, class plans, and underwriting rules, and in the making of insurance policy forms.

(F) The insurers’ sales operations are separate.

(G) The insurers’ marketing operations are separate.

(H) The insurers’ policy service operations are separate.

(2) Notwithstanding Senate Bill 1 of the 2003–04 Regular Session (Chapter 241 of the Statutes of 2003), the federal Gramm-Leach-Bliley Act (Public Law 106-102), and the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 and following), the sharing of information between insurers as described in subparagraphs (A) to (H), inclusive, of



paragraph (1) shall be more restrictive than may otherwise be permissible pursuant to those acts.

(d) Except to the extent restricted by subdivision (c) or any regulation adopted to implement subdivision (c), this section shall not be interpreted to restrict the right of an insurer or holding company to use aggregate data of its affiliated insurers having common ownership or operating in California under common control.

(e) Nothing in subdivision (c) is intended to amend, alter, or supersede other sections of this code, or other laws of this state, regarding any right of an insurer or holding company to use aggregate data of its affiliated insurers having common ownership or operating in California under common control.

(f) The commissioner may adopt regulations to implement this section.

(g) An insurer that is required by this section or Section 1861.02 to offer and sell good driver discount policies to good drivers to whom it did not sell those policies prior to November 8, 1988, due to driving safety record or vehicle type may file and, upon the approval of the commissioner, implement an interim rating plan for those applicants until the rating plan required by subdivision (a) of Section 1861.02 is adopted, provided that the insurer has timely filed an automobile insurance rating plan in compliance with subdivision (a) of Section 1861.02, and that plan has not been approved. An insurer may file an interim plan prior to the operative date of subdivision (b).

The commissioner shall notify the public of any application by an insurer for an interim rating plan. The public notice shall meet the requirements of Section 1861.06. The application shall be deemed approved 60 days after public notice unless (1) a consumer or his or her representative requests a hearing within 45 days of public notice and the commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or (2) the commissioner on his or her own motion determines to hold a hearing. If the commissioner grants a request for a hearing or determines on his or her own motion to hold a hearing on the application for an interim rating plan, but does not approve or disapprove the proposed interim rating plan within the later of 30 days from the date the commissioner grants a request or determines to hold the hearing or January 1, 1991, the interim rating plan may be used until the time that the commissioner issues a decision.

If an interim rate or proposed interim rate is greater than the rate ultimately approved, the insurer shall refund to its applicable policyholders, in proportion to the amount of premium paid by each, the difference between the total amount earned and the amount to which the



insurer is entitled under the rate ultimately approved, together with interest at the rate of 10 percent per year. In lieu of a refund, the insurer may provide a credit to the policyholder if the amount due is less than three dollars (\$3).

(h) Nothing contained in subdivision (b) or (c) shall be construed to expand, limit, or modify the requirements of subdivision (b) of Section 1861.02.

(i) A violation of this section by any insurer shall subject it to the penalties provided by Section 1861.14.

